

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 EHR 02465

EMERALD CAROLINA CHEMICAL, LLC

Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENT AND NATURAL
RESOURCES

Respondent.

SETTLEMENT AGREEMENT

The North Carolina Department of Environment and Natural Resources (“the Department”) and Emerald Carolina Chemical, LLC (collectively “the Parties”) enter into this Settlement Agreement in order to amicably resolve matters in controversy between them fully and finally.

The instant matter arose out of the issuance of a Compliance Order with Administrative Penalty in Docket No. 2014-001 (“the Order”), by the Department’s Division of Waste Management, Hazardous Waste Section (“the Section”) against Emerald Carolina Chemical, LLC (“Emerald Carolina”) on March 5, 2014, for alleged violations of the laws and rules governing the management of hazardous waste, as contained in Article 9 of Chapter 130A of the North Carolina General Statutes, and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code (collectively “the State Hazardous Waste Program”).

The Parties participated in an informal settlement conference in Raleigh, North Carolina on April 7, 2014. Based on additional information presented during that settlement conference, and follow-up information presented on April 8, 2014, and in order to avoid the cost and delay of

litigation, the Section and Emerald Carolina have reached the following agreement:

1. This Settlement Agreement is a negotiated compromise between the Parties. Neither this Settlement Agreement nor any action on the part of the Parties hereto shall be deemed an admission of liability with regard to the alleged violations of the State Hazardous Waste Program cited in the March 5, 2014 Order, incorporated herein by reference.
2. Emerald Carolina shall pay to the Section a penalty in the amount of forty-three thousand eighty-five dollars (\$43,085.00) in settlement of the penalty assessed in the Order. The Section agrees to accept the payment of the penalty in complete satisfaction of the original penalty assessed in the Order, subject to the terms of this Settlement Agreement. Emerald Carolina shall pay the recomputed penalty in one installment within thirty (30) days of the execution of this Settlement Agreement.
3. In accordance with N.C.G.S. § 130A-22(j), and as outlined in Paragraph 3 of the "Conditions for Continued Operation" section of the Order, the Section assessed investigative and inspection costs to Emerald Carolina totaling one thousand five-hundred thirty-eight dollars and ten cents (\$1,538.10). Emerald Carolina shall pay these costs to the Section in one installment within thirty (30) days of the execution of this Settlement Agreement.
4. The payments required under Paragraph 2 and Paragraph 3 of this Settlement Agreement shall be made by two separate certified checks, money orders, or electronic fund transfers, one for the recomputed penalty and one for the investigative and inspection costs, payable to the Division of Waste Management, and mailed to Julie S. Woosley, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.
5. Emerald Carolina expressly waives its right to an administrative hearing on the March 5,

2014 Order. Within ten (10) days of the full execution of this Settlement Agreement, Emerald Carolina shall file with the Office of Administrative Hearings a Notice of Voluntary Dismissal with Prejudice, withdrawing its Petition for a Contested Case Hearing in *Emerald Carolina Chemical, LLC v. North Carolina Department of Environment and Natural Resources*, 14 HER 02465.

6. Emerald Carolina expressly stipulates and acknowledges that, by entering into this Settlement Agreement, it waives for purposes of collection of the above-described penalty and costs any and all defenses to the underlying assessment of said penalty and costs, and that the issue in any action to collect the penalty and costs will be limited to the payment or non-payment thereof in accordance with the terms of this Settlement Agreement.
7. The terms of this Settlement Agreement constitute a full, final and complete settlement of the March 5, 2014 Order. In consideration for correction of the alleged violations cited in the Order and payment of penalties and costs specified in paragraph 2 and 3, above, the Section hereby releases Emerald Carolina and its officers, directors, agents, customers, servants, employees, representatives, parents, subsidiaries, successors, and assigns from all proceedings, claims, damages and causes of action within the scope of the State Hazardous Waste Program arising out of or related to the facts and circumstances and allegations set forth in the Order.
8. Nothing in this Settlement Agreement shall restrict the right of the Section to inspect Emerald Carolina and take enforcement action against Emerald Carolina for any new, subsequent, or repeat violations of Article 9 of Chapter 130A of the North Carolina General Statutes or the State Hazardous Waste Rules. The Section reserves the right in any

subsequent enforcement action to rely on the Order or this Settlement Agreement as evidence of Emerald Carolina's compliance history. It is further understood that Emerald Carolina may contest any subsequent enforcement action based on allegations of new, subsequent, or repeat violations, and reserves the right to contest the Section's reliance on the Order or this Settlement Agreement as evidence of its compliance history, to the extent such right is provided in Chapter 130A of the North Carolina General Statutes.

9. Emerald Carolina and the Section agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Emerald Carolina shall not apply for attorney fees or costs under any rule or law, and the Section shall not be liable for any attorney fees, costs, or expenses incurred by Emerald Carolina.
10. Emerald Carolina and the Section agree that the consideration for this settlement is in the promises contained herein, that this Settlement Agreement contains the entire agreement between them, and that there are no understandings or agreements, verbal or otherwise, regarding this Settlement Agreement except as expressly set forth herein. This Settlement Agreement can be amended only by written agreement executed by both parties.
11. This Settlement Agreement is contractual in nature and not just a recitation of terms. The language of this Settlement Agreement shall be construed, enforced, and governed by the laws of the State of North Carolina.
12. Each provision of this Settlement Agreement is intended to be severable, and if any provision is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal, or unenforceable

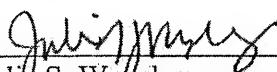
provision had not been contained therein.

13. This Settlement Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors, and administrators of Emerald Carolina and to the Section, its officials, managers, employees, assigns, predecessors, and successors.
14. This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.
15. The corporate officer signing on behalf of Emerald Carolina hereby warrants that he is competent to enter into this Settlement Agreement, that he has authority to enter into this Settlement Agreement on behalf of Emerald Carolina, and that no court or tribunal of competent jurisdiction has found him to be incompetent or otherwise incapable of handling his business affairs or entering into a binding agreement or contract.
16. The undersigned representative of Emerald Carolina hereby acknowledges that he has read this Settlement Agreement, conferred with his attorney, fully understands the contents of the Settlement Agreement, consents to the settlement of claims on the terms set forth herein, and does so in reliance upon his own judgment and advice of his attorney and not in reliance on any other representations or promises of the Section, its representatives, or its attorneys.

THE PARTIES ACKNOWLEDGE THAT EACH HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTANDS ITS CONTENTS AND ITS LEGAL AND BINDING EFFECT. EACH PARTY FURTHER ACKNOWLEDGES THAT EACH MAKES A KNOWING AND VOLUNTARY WAIVER OF THEIR RIGHTS IN EXCHANGE FOR THE CONSIDERATION SPECIFIED IN THIS AGREEMENT.

IN WITNESS WHEREOF, this Settlement Agreement is executed in duplicate originals:

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES:


Julie S. Woosley
Chief, Hazardous Waste Section
Division of Waste Management

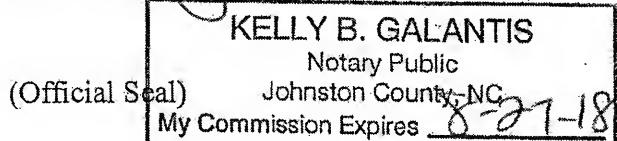
5/21/14
Date

NORTH CAROLINA
County of WAKE

I, Kelly B. Galantis, A Notary Public for said County and State, do hereby certify that Julie S. Woosley personally appeared before me this day, is personally known to me or provided official identification in the form of Personally known, and acknowledged the due execution of the foregoing instrument.

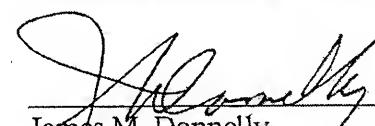
Witness my hand official seal, this the 21 day of May, 2014.


Kelly B. Galantis
Notary Public



My Commission expires: 8-27-18

FOR EMERALD CAROLINA CHEMICAL, LLC:

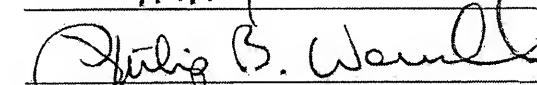

James M. Donnelly
President, Emerald Specialties Group
Emerald Performance Materials, LLC

5/13/14
Date

WASHINGTON ⁰⁴⁻⁰
County of Hamilton

I, Philip B. Worrell, A Notary Public for said County and State, do hereby certify that JAMES M. Donnelly personally appeared before me this day, is personally known to me or provided official identification in the form of ✓, and acknowledged the due execution of the foregoing instrument.

Witness my hand official seal, this the 13th day of May, 2014.


Philip B. Worrell
Notary Public

(Official Seal)

PHILIP B. WORRELL, Notary Public
In and for the State of Ohio
My Commission Expires April 28, 2018